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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

**GC Docket No. 92-52**

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AUG 9 1994

In the Matter of:

Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings

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RM-7739  
RM-7740  
RM-7741

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**REPLY COMMENTS OF  
JEROME THOMAS LAMPRECHT**

Jerome Thomas Lamprecht hereby submits these Reply Comments in response to the comments filed by Barbara D. Marmet on July 22, 1994. Mr. Lamprecht respectfully submits that, in light of the D.C. Circuit's holding in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993), the Commission must eliminate or severely diminish the weight accorded "local residence" in the award of broadcast licenses. Moreover, in keeping with the instruction of the court of appeals, the Commission's new standard must give proper (*i.e.*, greater) weight to prior broadcast experience, which the court of appeals correctly identified as a far better indicator of successful operation of a station in the public interest.

1. Tom Lamprecht has been struggling for over ten years to obtain a lawful adjudication of his application seeking a license to operate an FM broadcast station in Middletown, Maryland. After the Commission awarded the station to Ms. Barbara Marmet on the basis of its gender preference policy, the D.C. Circuit vacated the Commission's decision, holding that the award

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of the station to Ms. Marmet was based upon unconstitutional discrimination. *See Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992). On remand, however, the Commission again awarded the license to Ms. Marmet, stating that

Marmet's *very slight* advantage for [local residence and community activities] and *very slight* advantage for auxiliary power outweigh Lamprecht's *slight* advantage for broadcast experience and are ultimately sufficient to support the grant of her application under the circumstances of this proceeding.

*Jerome Thomas Lamprecht*, 7 F.C.C. Rcd. 6794, 6795 (1992) (emphasis added). Mr. Lamprecht again appealed to the D.C. Circuit, arguing that the Commission's actions in this case continued to violate the Constitution. In the mean time, the D.C. Circuit decided *Bechtel*. Although Mr. Lamprecht argued that no remand was needed here because award of the station to Mr. Lamprecht was constitutionally mandated without regard to further action by the Commission, this case has nonetheless returned again to the Commission.

2. Throughout this licensing proceeding, Mr. Lamprecht has contended that the Commission has given excessive weight to the "local residence" factor upon which Ms. Marmet chiefly relies. In light of *Bechtel*, this factor should get no weight at all. Under *Bechtel*, it is arbitrary and capricious for the Commission to give dispositive preference to applications on the ground that owners will operate the station. This being so, it is obviously no less arbitrary and capricious to grant a dispositive preference to applicants on grounds that its potential owners have lived in the community to be served. If it is arbitrary to favor potential owners because they will directly participate in management in the first place, then it is certainly arbitrary to award licenses on the basis that an owner's past community residence will somehow bring community knowledge to station operations. As a matter of sound policy, in light of the vast proliferation of broadcast and other sources of information and communication, favoritism for

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local owners is simply an anachronism that serves little purpose. As the court of appeals noted in *Bechtel* with regard to integration, if there are explicit community service functions that should be encouraged, there are far better ways of doing so than using local residence as a supposed predictor of good service.

3. The *Bechtel* opinion correctly identifies broadcast experience as a far superior indicator of potential broadcast success than the criteria previously emphasized by the Commission. See 10 F.3d at 884 (criticizing inadequate weight given by Commission to broadcast experience and noting that "it is hard to imagine that anyone seriously interested in 'picking winners' would so heavily downgrade [broadcast experience]"). In adopting new procedures, the Commission should respect the Court's guidance, and give appropriate weight to broadcast experience.

4. In its *Bechtel* opinion, the Court made clear that the Commission cannot continue to apply the arbitrary and capricious policy that this Rulemaking is intended to supplant. It must evaluate "any other application properly before it" under procedures that conform with the Court's direction. See 10 F.3d at 887. In applying new procedures that take proper account of broadcast experience, however, the Commission should not allow an applicant who has been operating a station during the pendency only by virtue of the former arbitrary and capricious policy to claim enhanced broadcast experience. Cf. Marmet Comments at 3, 6. Allowing this type of bootstrap claim to broadcast experience credit would be manifestly unjust. In this particular case, it would also allow Ms. Marmet to further benefit from unconstitutional discrimination at the expense of the party already found to have been the victim of that discrimination.

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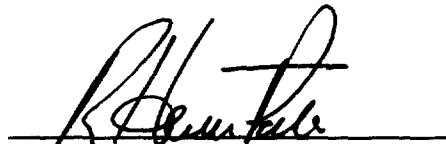
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### Conclusion

As the court of appeals has directed, the Commission should abandon the notion that the listening public can best be served by "owner-operators," a notion at odds with commercial reality in every other area of our nation's economy. As a necessary consequence, the similarly unrealistic notion that prior residence in a community should be given weight in determining which licensee can best serve the public must also be scrapped. If the point of the licensing procedure is to see who is most likely to run a successful operation (by definition, therefore, giving the public what it values), then broadcast experience deserves far greater attention in the Commission's analysis.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

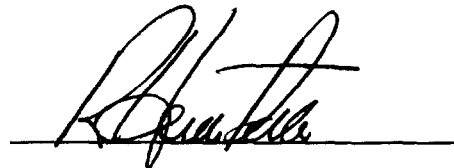
I certify that, this 8th day of August 1994, a copy of the foregoing Reply Comments of Jerome Thomas Lamprecht was mailed, first class postage prepaid, to the following counsel:

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A handwritten signature in black ink, appearing to read "R. J. Riffer", is written over a horizontal line.